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Supreme Court, U. S.

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in the

**Supreme Court
of the
United States**

**CA. NO. 76-3185
DC #CV644-73C2**

SAFE STOP BRAKE CORPORATION,
a Florida corporation,

Petitioner,

vs.

GENERAL MOTORS CORPORATION,
a Delaware corporation,

Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE NINTH CIRCUIT**

Alfred J. Schwepppe

Schwepppe, Doolittle, Krug,
Tausend, Beezer & Beierle
1600 Peoples National Bank Bldg.
1415 Fifth Avenue
Seattle, Washington 98171

John H. Oltman
Oltman and Flynn
415 Sunrise Prof. Bldg.
915 Middle River Drive
Fort Lauderdale, FL 33304

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SAFE STOP BRAKE CORPORATION,
Petitioner,

vs.

GENERAL MOTORS CORPORATION,
Respondent.

PETITION FOR WRIT OF CERTIORARI

I. PETITION. Safe Stop Brake Corporation petitions the Supreme Court of the United States for a Writ of Certiorari to review the judgment of the Court of Appeals for the Ninth Circuit in CA #76-3185 entitled, Safe Stop Brake Corporation, a Florida corporation v. General Motors Corporation, a Delaware corporation.

A. OPINIONS. There are no official or unofficial reports of the opinions of the courts below, but the opinions of the Court of Appeals for the Ninth Circuit and the United States District Court for the Western District of Washington are appended hereto as Exhibits A and B respectively.

B. JURISDICTION. The jurisdiction of this Court is invoked on the following grounds:

1. The judgment of the Court of Appeals for the Ninth Circuit was dated and entered on November 13, 1978.

2. The Order of the Court of Appeals for the Ninth Circuit denying appellant's petition for rehearing was dated and entered on December 13, 1978.

3. This Court has jurisdiction to review the judgment of the Court of Appeals for the Ninth Circuit by Writ of Certiorari under 28 U.S.C. Sec. 1254.

C. QUESTIONS. The questions presented for review are:

1. Whether the Court of Appeals' decision that the GM (Szablowski) seat switch under U. S. Patent No. 3,718,791 anticipated the Safe Stop (Fontaine) composite seat and switch U. S. Patent No. 3,704,352 is unconstitutional and in conflict with decisions of this court which hold that an invention, in order to constitute anticipation, must be reduced to practice;

2. Whether the Court of Appeals' decision that the invention of the Safe Stop (Fontaine) Patent No. 3,704,352 was obvious to one of ordinary skill in the art is in conflict with decisions of this Court which hold that the fact that an invention seems simple after it has been made does not determine the question and, far from being an objection to it, may constitute its great excellence and value.

D. CONSTITUTIONAL PROVISIONS AND STATUTES.

The Constitutional provisions and statutes which the case involves are:

1. Article I, Section 8 of the United States Constitution. "The Congress shall have power . . . to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."
2. U.S. Code, Title 35, Patents, Section 102. "A person shall be entitled to a patent unless —
 - a. the invention was known or used by others in this country, . . . before the invention thereof by the applicant for patent, or . . .
 - g. before the applicant's invention thereof the invention was made in this country by another who had not abandoned, suppressed, or concealed it."
3. U.S. Code, Title 35, Patents, Section 103. "A patent may not be obtained though the invention is not identically disclosed or described as set forth in Section 102 of this Title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made."

E. STATEMENT OF THE CASE.

1. Statement of Facts.

John G. Fontaine filed his patent application on the composite seat and switch on November 17, 1971. U.S. Patent 3,704,352 was issued to Fontaine on this composite seat and switch on November 28, 1972. *He had the earliest filing date on the invention in suit.*

Plaintiff is the owner of the patent-in-suit, as assignee of Fontaine. Plaintiff is in the business of manufacturing and selling seat switches for use in its brake interlock system under U.S. Patent 3,487,451, which was also originally issued to Fontaine.

Fontaine moved from Seattle to Florida in 1962. Prior to that time the Dade County Transit Authority, located in Miami, Florida, had designed and implemented a brake interlock system, which included an ordinary arm-actuated switch placed under a spring-loaded seat. The idea was good, but the Transit Authority had problems with this system.

Fontaine was approached by the Dade County Transit Authority to solve the problems which the Transit Authority had encountered. He invented a first seat switch. It included two contacting sheets carrying contacts which were held apart by a resilient compressible separator. The whole assembly was enclosed within an envelope.

An arrangement was made by plaintiff with American Associated Companies, Inc., of Atlanta, Georgia, to distribute the first Fontaine seat switch. In

the process of making that arrangement Fontaine went to Atlanta on February 16, 1970, and while there installed a switch in a school bus. Initially, Fontaine installed the switch below the seat cushion on top of the base of the seat, just as the switches had been installed for the Dade County Transit Authority, but he encountered problems with sensitivity of the switch when it was installed in that manner.

The first Fontaine seat switch was a separate component, which was designed to be installed in vehicles which had already been fully manufactured. Fontaine was advised by patent attorneys that the patent on the first Fontaine seat switch, No. 3, 487,451, was limited to brake applications. Fontaine felt that there was a need for a seat switch which had other functions and which was designed to be integrated with the seat at the time of its manufacture and installation in a vehicle. This resulted in his applying for a patent upon the composite seat and switch of the patent-in-suit, No. 3,704,352.

That invention was a unified structure in which seat and switch were integrated together as layers in a multilayer composite wherein the switch was in effect blended into the seat.

Claim 4 of the patent-in-suit incorporates Claim 1 by reference. Claim 4 hence reads as follows:

Claim 1. A composite seat and switch comprising:

A pair of mutually facing horizontal contacting sheets at least one of which carries a plurality of electrical contacts distributed over an area thereof normally occupied by a seated person,

a resilient, compressible, insulating separator between said sheets and normally keeping said sheets apart,

said separator having apertures aligned with said electrical contacts through which said contacts may close in response to a person sitting on said sheets,

a horizontal insulating pad contacting one side of one of said sheets and extending beyond said sheets to occupy a greater area than said sheets,

means insulating the other of said sheets,

seat springs supporting said pad, sheets, separator and insulating means, and

a seat cover covering said pad, sheets, separator, insulating means and said springs, thereby integrating the last mentioned elements into a functional composite seat and switch.

Claim 4. The composite seat and switch of Claim 1 in which said pad has a recess therein receiving said contacting sheets and said separator.

[Exhibit C attached hereto applies this claim to one of Plaintiff's structures.]

Fontaine built an operating bench model of a composite seat and switch prior to July 1, 1970.

On September 25, 1970, the National Highway Transportation and Safety Authority published a

proposed Federal Standard, which required the sensing of an occupant of a seat in connection with the seat belt system of the vehicle. In response to the publication of this proposed standard, defendant began working in October or November, 1970 upon the development of a seat switch to comply with this proposed Federal Standard.

This development ultimately resulted in the accused structures which are shown in Exhibits D and E.

On September 16, 1971, Teofil Szablowski applied for a patent upon a pressure responsive seat switch, and U.S Patent 3,718,791 was issued on that seat switch on February 27, 1973. That patent has been assigned to defendant. The Szablowski patent does not show a recess.

Two accused versions of defendant's composite seat and switch were made and sold during the period from 1971 through the date of the trial.

Plaintiff contends that the accused versions were infringing on the patent-in-suit only when the switch was mounted within a recess in the upper surface of a seat cushion and directly beneath the seat cover. The Szablowski patent does not show a recess. It is a *different* invention.

G. INITIAL JURISDICTION. The basis for federal jurisdiction in the court of first instance was 35 U.S.C. 271, 281 and 28 U.S.C. 1338(a) and 1400(b).

H. ARGUMENT. The case was decided below in a way not in accord with the applicable decisions of this court.

I. Anticipation. The Court of Appeals or the Ninth Circuit stated:

"Confronted with the *prima facie* difficulty presented by the adversary's earlier filing, plaintiff attempted to prove by lay witnesses that the Fontaine patent had been reduced to practice before that of Szablowski."

Plaintiff had no *prima facie* difficulty based on filing dates at all. The Szablowski patent was for an entirely different invention than the recessed and integrated composite seat and switch invented by Fontaine and covered by his patent. Fontaine had the earliest filing date on the invention in suit, and the Szablowski patent really had absolutely nothing to do with that invention. It is error to lump the Szablowski patent and the Fontaine patent together as the same invention. They were simply not directed at all to the same invention and Fontaine did not have to overcome any earlier filing date of Szablowski. Fontaine had the earliest filing date on the invention at issue here.

In *Coffin v. Ogden*, 85 U.S. 120 (1874) this court stated:

"The invention or discovery relied upon as a defense, must have been complete, and capable of producing the results sought to be accomplished; and this must be shown by the defendant. The burden of proof rests upon him,

and every reasonable doubt should be resolved against him. If the thing were embryonic or inchoate; if it rested in speculation or experiment; if the process pursued for its development had failed to reach the point of consummation — it cannot avail to defeat a patent founded upon a discovery or invention which was completed; while in the other case there was only progress, however near that progress may have approximated to the end view. The law requires, not conjecture, but certainty. If the question related to a machine, as thus exhibited, the conception must have been clothed in substantial form which demonstrates at once its practical efficacy and utility . . . The prior knowledge and use by a single person is sufficient . . . Until his work is done, the inventor has given nothing to the public."

Another case in point is *Corona Cord Tire Company v. Dovar Chemical Corp.*, 276 U.S. 358 (1928). The patent in suit related to accelerators used in the vulcanization of rubber. A defense to the action was set up alleging prior knowledge by Dr. Kratz of the invention claimed. In 1916, Kratz prepared an accelerator referred to as D.P.G. and demonstrated its utility as a rubber accelerator by using it in making test slabs of vulcanized or cured rubber. Every time he produced such a slab, he recorded his tests on cards which he left with the Norwalk Company. By these tests, he determined the superiority of D.P.G. over other known accelerators.

The court held that:

"but even if we ignore this evidence of Kratz' actual use of D.P.G. in those rubber inner tubes which were sold, what he did at Norfolk, supported by the evidence of Dr. Russell, his chief, and by the indubitable records that are not challenged, leave no doubt in our minds that he did discover in 1916 the strength of D.P.G. as an accelerator as compared with the then known accelerators, and that he then demonstrated by a reduction in the practice of cured or vulcanized rubber. This constitutes priority in this case."

Petitioner contends that the decisions of the Court of Appeals for the Ninth Circuit and the trial court in this case are in conflict with the above decisions of this court.

Fontaine filed his patent application on November 17, 1971. *Fontaine had the earliest filing date on the invention in suit.* G. M. sought to overcome that filing date by introducing evidence of an earlier reduction to practice. On page 394, line 4 of the trial transcript, the witness Szablowski states that he only made switches which were supplied to Fisher Body, and that he was not familiar with how Fisher Body used them.

"Q. Have both types of switches been used in a recess in the seat cushion of an automobile, General Motor automobile?

A. I would like to explain this. We make these switches and ship them to Fisher Body and Fisher Body install them, and they use them in recesses, bottom or top, I am not familiar with that. I'm only familiar well with the invention of the larger switch which is 10-B."

Yet, on pages 712 through 714 of the transcript, he said, under pressure of trial, that he saw the switches in a recess in a seat prior to November 17, 1971.

"Q. Now I wonder if you could just briefly tell us, you mentioned that you saw a seat. I wonder if you could tell us for example what that seat was, what it included?

A. It was a regular car seat.

Q. Did you include the springs?

A. Yes.

Q. And a cushion?

A. Yes.

Q. And you mentioned a recess. Was there such a recess in the cushion?

A. Yes, there was a recess and that recess wasn't molded in, it was cut out with a knife by Fisher Body people. You could see it was very crude, a rectangular sort of recess.

Q. And was there any type of a seat trim on this seat?

A. Oh, yes. I noticed that Fisher Body when they test something that the seat goes back to people that do trimming actually, again put back the upholstery, so it was done just the way it would be done in production."

G. M. relies on this testimony to establish a reduction to practice of the invention in suit. However, Szablowski was not corroborated, and in fact contradicted himself in his own testimony. *If the trim (seat cover) was on the seat, how could he see a recess or switch?* He could not. If the trial court's finding that he did is allowed to stand because of Rule 52a FRCP, petitioner is deprived of its rights without due process of law. Such an erroneous application of Rule 52a deprives petitioner of any benefit at all from the patent system.

We submit that this *contradictory* and *uncorroborated* testimony of Szablowski does not sufficiently establish a reduction to practice nor a completed invention as required by *Coffin v. Ogden and Corona Cord Tire Company v. Dovan Chemical Corp.* See also "Date of Invention: The Varying Standards of Proof" Georgetown Law Journal, Volume 57: 162, 1968.

In *The Barbed Wire Patent*, 143 U.S. 275 (1892), this court held that proof of anticipation of a patent shall be clear, satisfactory and beyond a reasonable doubt. G. M. has not satisfied that burden of proof.

To allow the trial court's clearly erroneous findings of fact on this point to stand though in conflict with the decisions of this court would deprive petitioner of its rights without due process of law.

On the other hand, petitioner proved a reduction to practice prior to that alleged by G. M. by testimony and documentary evidence which was clear, convincing and beyond a reasonable doubt. Fontaine testified at length that the switch was installed in a bench model in a recess which was tested and found operable prior to June 30, 1970. The trial court found as a fact that this bench model was built and operating prior to that date.

Prior to June 30, 1970, Gardner found the installation of a recessed switch in accordance with the Fontaine patent "on a low bench in the back room" and operated it (page 447, lines 6-8) by sitting on it and activating a light (page 447, lines 10-11). He lifted the covering and saw the switch under the covering (page 447, line 21) "sitting down in somewhat of a hole" (page 448, line 4-5). Gardner had "seen prior switches" but "this one didn't have a covering or any type of thing on it." (page 447, line 22-25).

"I asked somebody in the back what this was and they said it was John's new seat switch." (page 450, 11. 1-2).

Gardner "sat on it", pushed his hands on it and activated the light (p. 447, 11. 10-11).

Once he sat on it to activate the light (p. 447, 1. 10; p. 461) and once he simply put his hand on it and pushed down to activate the light (p. 448, 1. 5, 1. 11; p. 461).

He saw a cover on it that was just laid loose (p. 453, 11. 23-25-26) over the foam. It looked like vinyl Naugahyde or leather (Fontaine said it was plastic, T., p. 53).

The bench was 19 inches or so high (p. 455, 1. 23) and the foam in length approximated 49 inches, the length of a table which measured 44 inches plus about four inches (pp. 456-459), a total of 48 inches. That was 20 inches wide (p. 459), the width of a 16-inch table plus 4 inches. The foam on top of the bench was about eight inches thick (p. 458, 1. 25; 459, 1. 1). "This was a new switch, a new development . . ." (p. 460, 11. 11-12).

Gardner's testimony, when thus properly analyzed, is clear corroboration of Fontaine's testimony that the bench installation of Fontaine's switch was within Claim 4 and a satisfactory "operating bench model." (Trial court's language in Finding 4).

Next let us also look separately at Heikes' testimony.

He came to the Fontaine offices in Fort Lauderdale prior to June 30, 1970 (p. 430, 1.22; p. 431, 1. 1).

He saw there a "bench switch installation" (p. 431, 11. 2-3), "a brand new seat switch which was pointed out to me by his inspector in the assembly room" (p. 431, 11. 7-8). He saw the switch components of the installation once (p. 431, 1. 14). The "former inspector at Automatic lifted up the padding and said, 'This is John's new switch.'" (p. 431, 11. 16-17). He saw the switch operate. "They would put their hand on it or put their foot on it and a light would go on." (p. 431, 11. 17-21).

The switch "didn't have any padding. It was just the inside of the case, the inside mechanism." (p. 431, 11. 24-25) He recalls seeing the "recess in which the switch was received." (p. 432, 11. 2-4) On cross examination he testified that he observed the bench installation being made to light a light five or six times by a man named Crooks, a former inspector for Fontaine. (p. 435, 1. 12-23) The witness also pushed it and sat on it (p. 435, 1. 25), once or twice (p. 436, 1. 24). Two other men in his presence "sat on it and pushed it." (p. 437, 11. 9-10). It was a flat bench with padding on top of the bench in layers. (p. 439, 11. 7-8) It was about 30 inches long (p. 440, 11. 18-22) and the foam cushion was about 10 inches thick (p. 441, 11. 1-2, 17).

The switch ". . . was in between, or they had to open up one of the — a couple of layers of the foam." (p. 442, 11. 10-11). "A couple of layers or so were lifted" and then he saw the switch (p. 442, 11. 20-22). As to the recess, "As I recall there was something like that." (p. 443, 11. 1-5)

Thus, Fontaine's testimony was more than adequately corroborated.

The Court of Appeals and the trial court erred and were in conflict with the applicable decisions of this court in refusing to recognize the earlier reduction to practice of Fontaine. Secondly, the Court of Appeals and the trial court erred in finding that Szablowski had reduced the invention in suit to practice prior to the filing date of the Fontaine patent. We submit that reduction to practice in this case is a two edged sword. It is not permissible to judge reduction to practice of Fontaine by one standard and reduction to practice of Szablowski by

another lesser standard. There is far more convincing evidence of reduction to practice by Fontaine than there is of reduction to practice by Szablowski. Yet, flying in the face of this evidence, both the Court of Appeals and the trial court found that Fontaine had not reduced the invention to practice and Szablowski had. We submit that the courts applied an erroneous standard of proof which was really a two faced standard; far more strict for Fontaine than Szablowski. It was not due process of law. In effect, the courts deprived Fontaine of his day in court. This was clear error and was unconstitutional.

2. Obviousness.

The Court of Appeals and the trial court were also in error in holding the patent-in-suit invalid as being obvious under 35 U.S.C. 103. It is clear from the opinions of the Court of Appeals and the trial court that the courts equated obviousness with simplicity and used hindsight, and this is clearly in conflict with the applicable decisions of this court. As this court stated in *Expanded Metal Company v. Bradford*, 214 U.S. 366 (1908):

"It is often difficult to determine whether a given improvement is a mere mechanical advance, or the result of the exercise of the creative faculty amounting to a meritorious invention. The fact that the invention seems simple after it is made does not determine the question. If this were the rule many of the most beneficial patents would be stricken down".

To the contrary, the simplicity of an invention may constitute its great excellence and merit. *Ray-O-Vac*

Company v. Goodyear Tire and Rubber Company, 321 U.S. 275; *Eibel Process Company v. Minnesota & Ontario Paper Company*, 261 U.S. 45 (1923). See also *Chesapeake & Ohio Railroad Company v. Kaltenbach et al.*, 95 F.2d 801 (1938) and *Exhibit Supply Company, Petitioner v. Ace Patents Corporation*, 315 U.S. 126 (1942)

If ever there was an invention which involved synergism, this has it. Layers of metal and foam are integrated in a unified whole which has greater effect than the sum of its parts. It is a multilayer structure which blends together in such a way that switch and seat become one harmonious entity.

Furthermore, the opinion that a patent is a "monopoly" should not detract from that opinion will not withstand critical analysis. In *U.S. v. Dubilier Condenser Corp.*, 289 U.S. 178, 186 this court stated:

"Though often so characterized, a patent is not, accurately speaking, a monopoly . . . The term monopoly connotes the giving of an exclusive privilege for buying, selling, working or using a thing the public freely enjoyed prior to the grant. Thus, a monopoly takes something from the people. An inventor deprives the public of nothing which it enjoyed before his discovery, but gives something to the community . . ."

In the middle ages, monopolies were granted to immigrants bringing new skills or trades into England (Chancellor Moreton's Message to Parliament in the reign of Henry VII, cited in "Walker on Patents" page

3.) Those monopolies were later abolished (*Darcy v. Allen*, 77 Engl. Rep. 1260, 11 Coke 84, F. Moore 673). But in the Ipswich Tailors case in 1615 (*Taylors De Ipswich v. Sherring*, 1 Rolle Rep. 4, Godbolt 252) the Court of Kings Bench specifically approved the crown's right to grant patents for inventions. This policy in favor of patents for inventions received specific approval in the Statute of Monopolies (1624). With the inclusion of the patent and copyright clause in the Constitution of the United States, this country maintained the English legal tradition that patents on inventions are outside the reach of the antimonopoly laws.

Thus, in our legal tradition, the favored status of patents on inventions was securely established before the antimonopoly laws themselves. There is nothing in the history of the patent laws which should make them subservient to the antimonopoly laws and policies of this country.

II. CONCLUSION

The trial court and the Court of Appeals erred in holding that the patent in suit was anticipated by a reduction to practice of the Szablowski patent 3,718,791. The trial court and the Court of Appeals also erred in failing to find a prior reduction to practice by Fontaine under patent 3,704,352. These holdings of the trial court and the Court of Appeals were clearly in conflict with the applicable decisions and policies of this court.

The trial court and the Court of Appeals erred and were in conflict with the decisions of this court in failing to uphold the validity of the Fontaine Patent 3,704,352. Even though the invention was simple, its simplicity and synergistic effect constituted its great merit and ingenuity, and under the decisions of this court discussed above, such a patent should be upheld.

Respectfully submitted,

SCHWEPPPE, DOOLITTLE,
KRUG, TAUSEND, BEEZER &
BEIERLE

By /s/ Alfred J. Schweppe
Alfred J. Schweppe

OLTMAN AND FLYNN
By /s/ John H. Oltman
John H. Oltman

EXHIBIT A

FILED NOV 13 1978

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 76-3185

SAFE STOP BRAKE CORPORATION,
a Florida corporation,

Appellant,

v.

GENERAL MOTORS CORPORATION,
a Delaware corporation,

Appellee.

**Appeal from the United States of District Court
for the Western District of Washington**

Before: WRIGHT and GOODWIN, Circuit Judges,
and JAMESON*, District Judge.

PER CURIAM:

The assignee of a patent sued General Motors for infringement, and appeals from a judgment holding the patent invalid.

*The Honorable William J. Jameson, United States District Judge for the District of Montana, sitting by designation.

The patent-in-suit covers an automobile seat switch activated by pressure. The evidence was in conflict, but there was ample evidence to support the trial court's finding that the GM (Szablowski) seat switch¹ anticipated the Safe Stop (Fontaine) seat switch.² Szablowski filed on September 16, 1971. Fontaine filed on November 17, 1971.

Confronted with the *prima facie* difficulty presented by the adversary's earlier filing, plaintiff attempted to prove by lay witnesses that the Fontaine patent had been reduced to practice before that of Szablowski. The trial court, however, found otherwise, and we cannot say that the finding is clearly erroneous.

The above finding of itself would invalidate the Fontaine patent and end the case. We note also the assertion that Fontaine's pressure switch as described in his claim was different from all the prior art because it was recessed into the automobile seat. The allegedly infringing switch is also recessed. The trial judge was satisfied from the evidence that the idea of recessing the switch into the seat to avoid an unmarketable lump in the seat surface was about as obvious as dumping a rock out of a shoe. We agree.

Affirmed.

¹ U.S. Patent No. 3,718,791. (General Motors)

² U.S. Patent No. 3,704,352. (Safe Stop)

EXHIBIT B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

No. 644-73C2

SAFE STOP BRAKE CORPORATION,
a Florida Corporation,

Plaintiff,

vs.

GENERAL MOTORS CORPORATION,
a Delaware Corporation,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. This is an action filed by plaintiff, Safe Stop Brake Corporation, a Florida corporation, for infringement by defendant, General Motors Corporation, of Claim 4 of U.S. Patent 3,704,352, entitled "Composite Seat and Switch." This Court has jurisdiction by reason of 35 U.S.C. 271, 281 and 28 U.S.C. 1333(a) and 1400(b).

2. Trial was held December 15 to 18, 1975, inclusive, on the issue of infringement. Trial on the issue of damages was deferred until after determination of the infringement issue.

3. Defendant has a regular and established place of business within the Western District of Washington. It has sold within this district vehicles, which included accused seats and switches, prior to filing of the complaint, and it has continued to sell such vehicles after filing of the complaint.

4. John G. Fontaine filed his patent application on the composite seat and switch here in suit on November 17, 1971. U.S. Patent 3,704,352 was issued to Fontaine on this composite seat and switch on November 28, 1972.

5. Plaintiff is the owner of the patent-in-suit, as assignee of Fontaine. Plaintiff is in the business of manufacturing and selling seat switches for use in its patented brake interlock system under U.S. Patent 3,487,451, which was also originally issued to Fontaine. There have been no commercial sales by plaintiff of any seat switches under the patent-in-suit.

6. Fontaine moved to Florida in 1962. Prior to that time, the Dade County Transit Authority, located in Miami, Florida, had designed and implemented a brake interlock system, which included an ordinary arm-actuated switch placed under a spring-loaded seat. The idea was good, but the Transit Authority had problems with the system.

7. Fontaine was approached by the Dade County Transit Authority to solve the problems which the Transit Authority had encountered. He invented a substitute seat switch (hereinafter "the first Fontaine seat switch"). It included two contacting sheets carrying contacts which were held apart by a resilient, compressible separator. The whole assembly was enclosed within an envelope.

8. An arrangement was made by plaintiff with American Associated Companies, Inc., of Atlanta, Georgia, to distribute the first Fontaine seat switch. In the process of making that arrangement, Fontaine went to Atlanta on February 16, 1970, and while there, installed a switch in a school bus. Initially, Fontaine installed the switch below the seat cushion on top of the base of the seat, just as the switches had been installed for the Dade County Transit Authority, but he encountered problems with sensitivity of the switch when it was installed in that manner. He then mounted the switch on top of the seat cushion directly underneath the seat cover. This manner of installation was more satisfactory, but it caused the seat cover to bulge and the outline of the switch to be visible.

9. The first Fontaine seat switch was a separate component, which was designed to be installed in vehicles which had already been fully manufactured. Fontaine was advised by patent attorneys that the patent on the first Fontaine seat switch, No. 3,487,451, was limited to brake applications. Fontaine felt that there was a need for a seat switch which had other functions and which was designed to be integrated with the seat at the time of its manufacture and installation in a

vehicle. This resulted in his applying for a patent upon the composite seat and switch of the patent-in-suit, No. 3,704,352. That seat switch will be referred to as "the second Fontaine seat switch".

10. Claim 4 of the patent-in-suit incorporates Claim 1 by reference. Claim 4 hence reads as follows:

1. A composite seat and switch comprising:

A pair of mutually facing horizontal contacting sheets at least one of which carries a plurality of electrical contacts distributed over an area thereof normally occupied by a seated person,

a resilient, compressible, insulating separator between said sheets and normally keeping said sheets apart,

said separator having apertures aligned with said electrical contacts through which said contacts may close in response to a person sitting on said sheets,

a horizontal insulating pad contacting one side of one of said sheets and extending beyond said sheets to occupy a greater area than said sheets,

means insulating the other of said sheets,

seat springs supporting said pad, sheets, separator and insulating means, and

a seat cover covering said pad, sheets, separator, insulating means and said springs, thereby integrating the last mentioned elements into a functional composite seat and switch.

4. The composite seat and switch of Claim 1 in which said pad has a recess therein receiving said contacting sheets and said separator.

11. Fontaine built an operating bench model of a composite seat and switch prior to July 1, 1970. The Court is unable to find, however, from the evidence in this case that this bench model corresponded to Claim 4 of the patent-in-suit.

There are no drawings, photographs, or other contemporaneous things constituting or depicting the alleged conception of Claim 4 and its reduction to practice prior to the filing of the application for the patent-in-suit. Fontaine's 1970 diary refers in August 1970 to a non-recessed embodiment of the patent-in-suit but contains no entry pertaining to the alleged bench construction and testing of an embodiment of Claim 4. The first draft patent application for the patent-in-suit, prepared in October 1971, did not disclose or mention any recessed embodiment of the patent-in-suit. Prior to the filing of his application for the patent-in-suit, Fontaine made two installations in automobiles, one on November 10, 1970 of the Figure 3 embodiment. Neither of these installations involved any recess in the seat cushion.

The Court is unable to find from the uncertain and conflicting testimony of Heikes and Gardner that the bench model, which each saw upon only one brief occasion more than five years prior to their court ap-

pearance, was in fact an embodiment of Claim 4 of the patent-in-suit. The testimony of Fontaine that the bench model was in fact an embodiment of Claim 4 is hence without credible corroboration.

The Court is in consequence unable to find that there was any reduction to practice by Fontaine of Claim 4 of the patent-in-suit prior to the filing of the patent application.

12. On September 25, 1970, the National Highway Transportation and Safety Authority published a proposed Federal standard, which required the sensing of an occupant of a seat in connection with the seat belt system of the vehicle. In response to the publication of this proposed standard, defendant began working in October or November, 1970 upon the development of a seat switch to comply with this proposed Federal standard.

13. Prior to the filing date of the patent-in-suit, defendant had devised and constructed a printed circuit seat switch and had installed the same wholly within a recess in the upper surface of an automobile seat cushion. Prior to the filing date of the patent-in-suit defendant's seat switch had been tested, released for production, and was actually in production. The accused seat switch and seat constructions, do not differ in any material respect from the seat switches and seat constructions which had been made, tested, released for production, and actually in production prior to the filing date of the patent-in-suit.

14. The accused structures were developed in order to comply with a mandatory Federal standard. Prior to the Federal standard, there was no need for the accused structures.

To meet the Federal standard, defendant relied upon its knowledge of the prior art and common sense to develop a seat switch arrangement to meet the standard.

15. On September 16, 1971, Teofil Szablowski applied for a patent upon a pressure responsive seat switch, and U.S. Patent 3,718,791 was issued on that seat switch on February 27, 1973. That patent has been assigned to defendant.

16. Two accused versions of defendant's composite seat and switch were made and sold during the period from 1971 through the date of the trial.

Plaintiff contends that the accused versions were infringing of the patent-in-suit only when the switch was mounted within a recess in the upper surface of a seat cushion and directly beneath the seat cover.

The accused versions were sometimes installed wholly within a recess in the seat cushion, sometimes only partially within a recess, and sometimes completely outside of the recess.

17. Included in the prior art were Butler patent No. 3,111,185; Fontaine patent No. 3,487,451; Wolf and Corn patent No. 3,735,330; Switches, Inc. patent No. 3,485,974; and the public use of the unpatented Efficient Instruments seat switch.

18. The differences between Claim 4 of the patent-in-suit and the prior art were such that the subject matter of Claim 4 would have been obvious at the time of

the purported invention to a person having ordinary skill in the art of pressure-actuated seat switches.

It was found by those working in the field that when a seat switch, having any significant vertical dimension, was placed on top of a seat cushion and immediately beneath the seat cover, it suffered from two shortcomings: (1) the switch was sometimes actuated by the tension of the seat cover alone and (2) the switch caused an unsightly bulge in the seat cover.

Given these shortcomings, it would have been obvious to anyone, but especially to one having ordinary skill in the art, that lowering the seat switch by placing it in a recess in the seat cushion would probably eliminate both shortcomings. That solution was obvious to Fontaine. It was just as obvious to defendant.

CONCLUSIONS OF LAW

1. Claim 4 of Fontaine patent No. 3,704,352 is invalid and void by reason of its failure to meet the requirements of Title 35, U.S.C. § 103.
2. Claim 4 of Fontaine patent No. 3,704,352 was anticipated by the work of defendant.
3. Claim 4 of Fontaine patent No. 3,704,352 has not been infringed by the accused seat switches and seat arrangements of defendant.
4. Defendant is entitled to judgment dismissing the action of plaintiff.
5. The Clerk shall enter judgment dismissing this action.

DATED at Seattle, Washington, this 18 day of June, 1976.

/s/ Donald S. Voorhees

United States District Judge

EXHIBIT C

CLAIM CHART 3,704,352

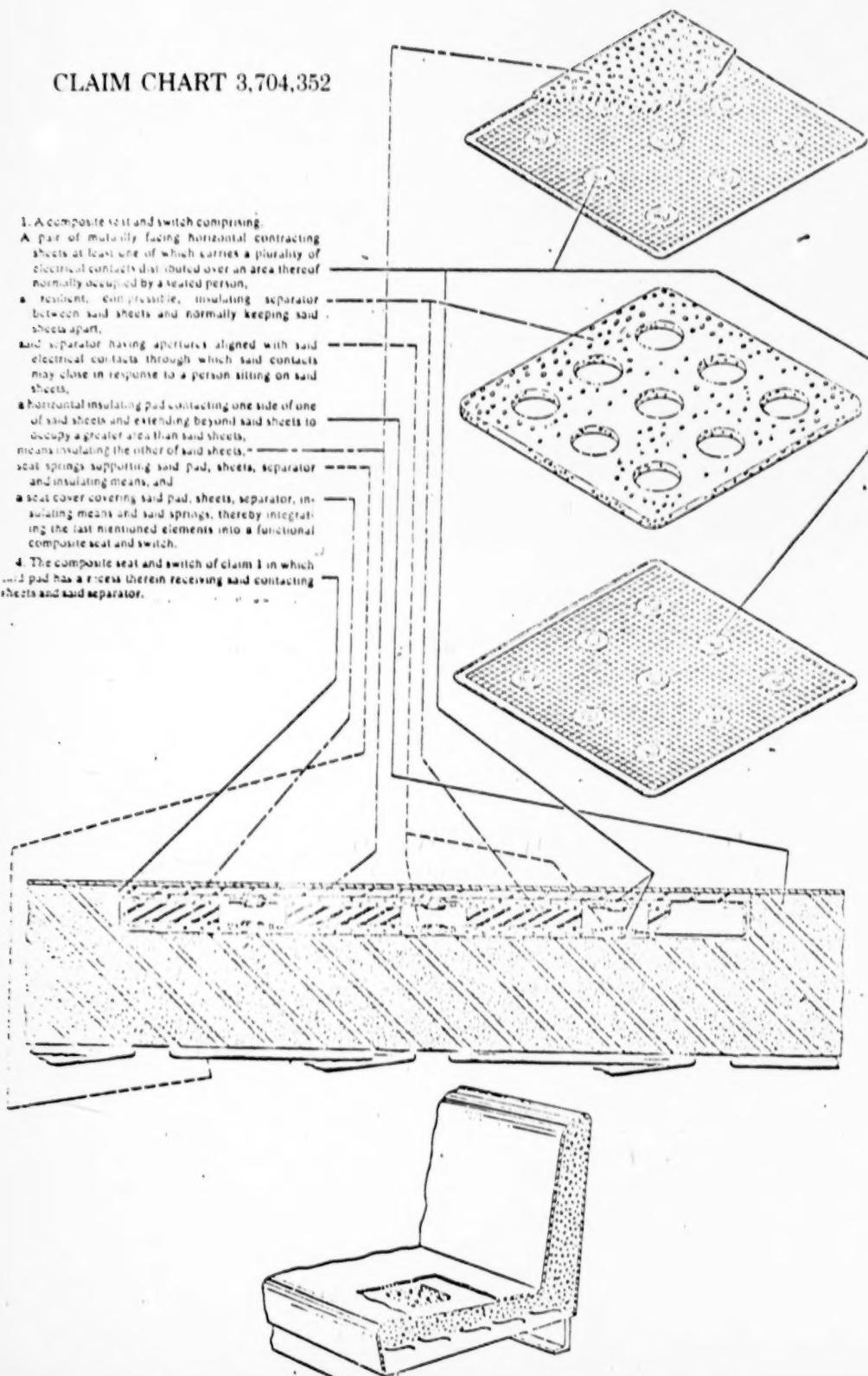


EXHIBIT D

CLAIM CHART 3,704,352

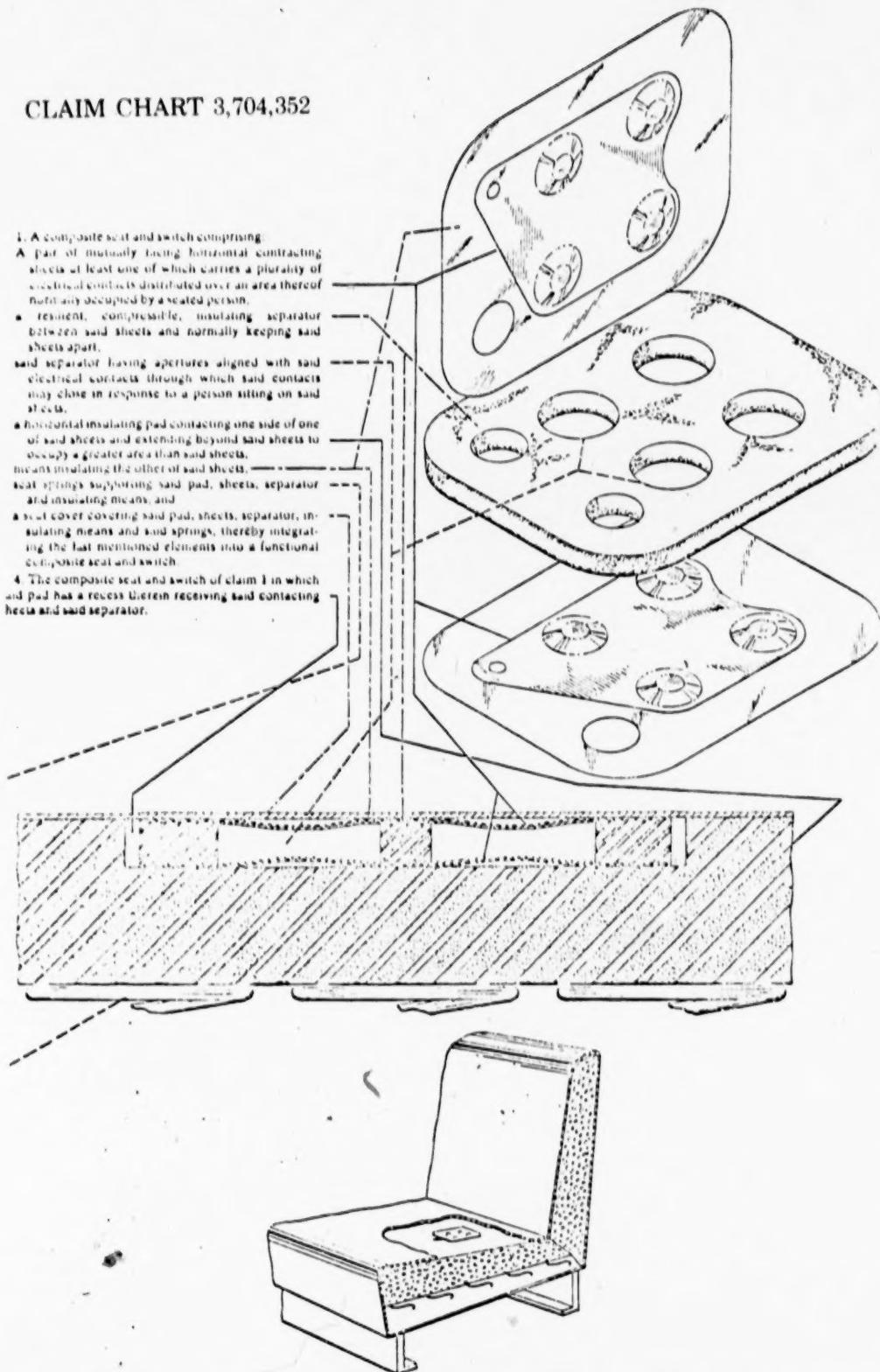
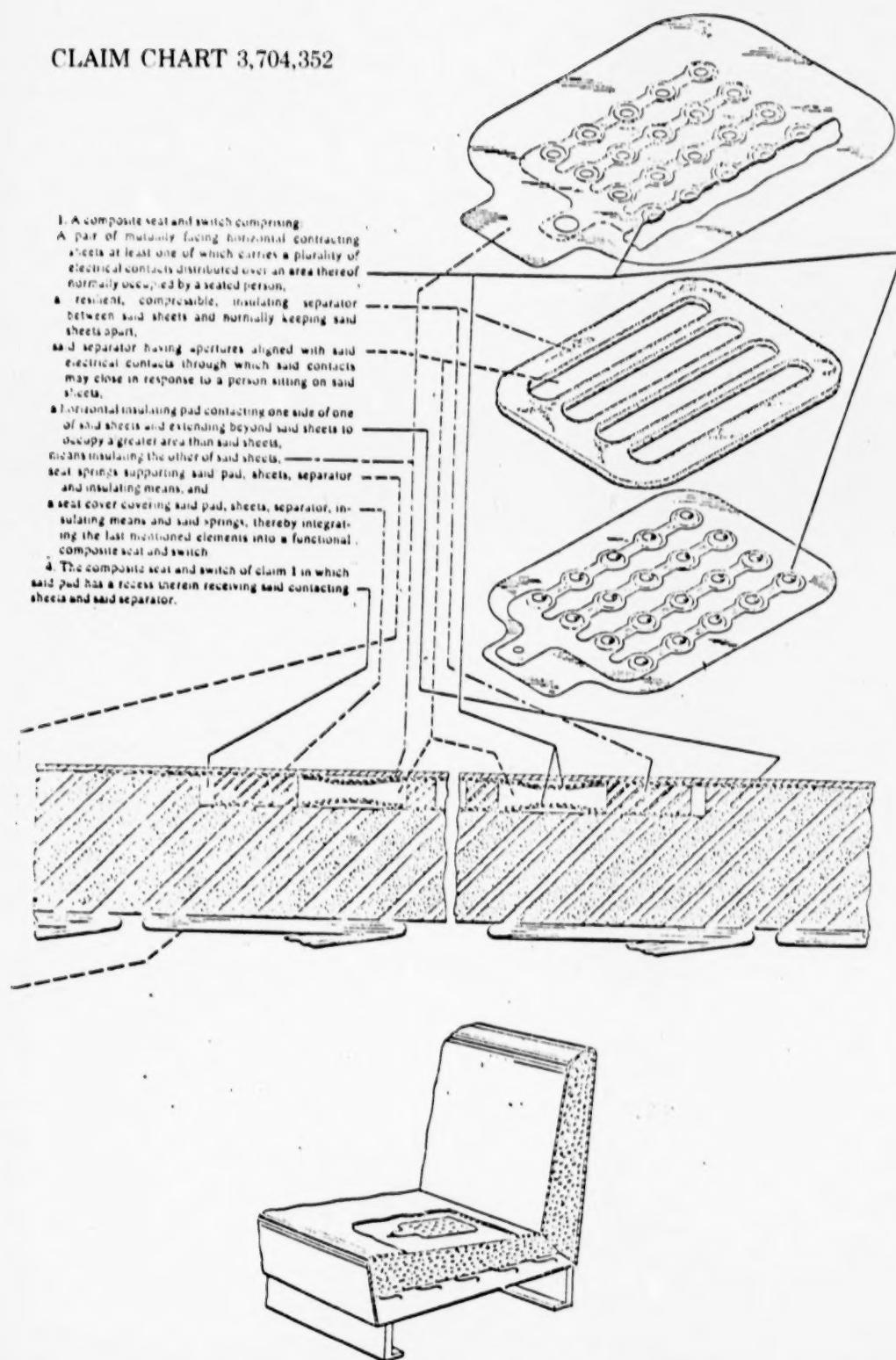


EXHIBIT E

CLAIM CHART 3,704,352



FEB 14 1979

MICHAEL NODAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1978



CA. No. 76-3185
DC #CV644-73C2
Docket No. 78-1151



SAFE STOP BRAKE CORPORATION,
Petitioner,

v.

GENERAL MOTORS CORPORATION,
Respondent.



**BRIEF IN OPPOSITION
TO PETITION FOR CERTIORARI**



Of Counsel
HERBERT FURMAN
3044 West Grand Boulevard
Detroit, Michigan 48202

GEORGE E. FROST
Attorney for Respondent
15-142 General Motors Bldg.
3044 West Grand Boulevard
Detroit, Michigan 48202

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**BRIEF IN OPPOSITION
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— • —

INTRODUCTION

Petitioner sued Respondent for alleged infringement of a patent on a seat switch recessed in a seat. The District Court heard all of the evidence, including the oral testimony of witnesses for both Petitioner and Respondent. The District Court found that: (1) the patent is invalid for obviousness; (2) the patent is not infringed; and (3) Respondent first "invented" the allegedly infringing structure because it tested, released for production, and actually commenced commercial production prior to the filing date of Petitioner's patent.

Fact findings on item (3) were made by the District Court after hearing the testimony of Respondent's witnesses and resolving a conflict in testimony of Petitioner's witnesses. The Court of Appeals affirmed and denied a petition for rehearing.

The Petition seeks review on (1) a contrived constitutional issue of due process of law and, (2) an alleged conflict with applicable decisions of this Court.

ARGUMENT

I.

NO CONSTITUTIONAL ISSUE

The Petition claims that Petitioner was denied due process of law because both the District Court and the Court of Appeals applied a stricter standard of proof for Petitioner's alleged reduction to practice than for Respondent's reduction to practice.

This so-called constitutional issue is a contrived afterthought. It is raised for the first time in the Petition. In the District Court and in the Court of Appeals, Petitioner strenuously urged that it was the first inventor. Both Courts decided this fact issue in favor of Respondent. The constitutional issue now raised for the first time is only an attempt to bypass the affirmed District Court decision on this fact issue.

The thrust of Petitioner's argument is contained in the quotations of the testimony of a General Motors' witness (Petition pp. 12-13). The testimony is taken out of context and is not completely set forth. In any event it is part of the live testimony considered by the District Court in resolving the fact issue of first invention in favor of Respondent. It is not a constitutional issue by any standard.

II.

NO CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT

In reaching its decision on obviousness, the District Court followed the path set forth in *Graham v. John Deere*, 383 U.S. 1 (1966), and subsequently reaffirmed in *Anderson's-Black Rock v. Pavement Salvage Company*, 396 U.S. 57 (1969); *Dann v. Johnston*, 425 U.S. 219 (1976); and *Sakraida v. Ag Pro, Inc.*, 425 U.S. 273 (1976).

The Petition incorrectly ignores these pertinent decisions. There is no conflict between the affirmed District Court decision and the applicable law.

CONCLUSION

This suit is a conventional patent suit involving fact issues of infringement, validity, and reduction to practice. These were properly resolved by the District Court upon the basis of the testimony and properly affirmed upon appeal. The Petition should be denied.

Respectfully submitted,

George E. Frost
Attorney for Respondent

Of Counsel
Herbert Furman